

STATE OF TENNESSEE, *ex rel.* ROBERT E.)
COOPER, JR., Attorney General and Reporter,)

v.

Case No. 2:12-cv-00053

MOUNTAIN AREA COMMUNICATIONS,
LLC, *et al.*,

Defendants.

On February 16, 2012, Plaintiff, State of Tennessee (“Plaintiff”), commenced a civil law enforcement action pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101 – 6108 (“Telemarketing Act”), and the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.* (“TCPA”), to obtain a permanent injunction and other equitable relief against all Defendants in connection with their marketing and sale of magazine subscriptions and other goods and services in violation of the Telemarketing Act’s Telemarketing Sales Rule, 16 C.F.R. Part 310 (“TSR”) and the TCPA. An Amended Complaint was filed on April 18, 2012, adding certain additional facts and counts, and changing the status of two relief defendants to primary defendants.

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Haverland (“Defendants”), have agreed to the entry of this Agreed Final Judgment and Stipulated Permanent Injunction as to Defendants Mountain Area Communications, LLC, American Publisher’s Service, LLC, Shawna R. McDonald, Eric N. McDonald and Zachary F. Haverland (“Judgment”) to resolve all matters of dispute between them in this action. Plaintiff and Defendants, having been represented by counsel and acting by and through said counsel, have consented to the entry of this Judgment without trial or adjudication of any issue of law or fact herein and without Defendants admitting liability for any violations alleged in the Amended Complaint.

NOW THEREFORE, Plaintiff and Defendants, requesting that the Court enter this Judgment, and the Court, having considered the Judgment reached between the settling parties, **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

Findings

1. This is an action by Plaintiff instituted under the Telemarketing Act, 15 U.S.C. §§ 6101 – 6108, the TSR, 16 C.F.R. Part 310, and the TCPA, Tenn. Code Ann. § 47-18-101 *et seq.* (“TCPA”). Pursuant to 15 U.S.C. § 6103(a), 16 C.F.R. 310.7, and Tenn. Code Ann. § 47-18-108 of the TCPA, Plaintiff has authority to seek the relief contained herein.

2. This Court has jurisdiction over the subject matter of this case and over the parties pursuant to 28 U.S.C. §§ 1331, 1337(a), and 15 U.S.C. § 6103, and supplemental jurisdiction over the state law claims of the State of Tennessee under 28 U.S.C. § 1367.

3. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c), 15 U.S.C. § 53(b) and (c), and 15 U.S.C. § 6103(e).

4. The activities alleged in the Amended Complaint are in or affecting the conduct of trade or commerce, as those terms are defined in Tenn. Code Ann. § 47-18-103(19).

5. The Amended Complaint states a claim upon which relief may be granted

against Defendants under the Telemarketing Act, 15 U.S.C. § 6103(a), and the TCPA, Tenn. Code Ann. § 47-18-104(a) and (b).

6. Defendants have entered into this Judgment freely and without coercion, and acknowledge that they have read, understand, and are prepared to abide by the provisions of this Judgment.

7. Defendants agree that the entry of this Judgment resolves all matters of dispute between Defendants and Plaintiff arising from the Amended Complaint in this action, including all allegations of contempt, up to the date of the entry of this Judgment.

8. Defendants waive all rights to seek appellate review or otherwise challenge or contest the validity of this Judgment and waive and release any claim they may have against the Receiver, Plaintiff, their employees, representatives, or agents.

9. Defendants agree that the facts as alleged in the Amended Complaint in this action shall be taken as true without further proof in any bankruptcy case or subsequent civil litigation pursued by Plaintiff to enforce its rights to any payment or money judgment pursuant to this Judgment, including but not limited to a nondischargeability complaint in any bankruptcy case. Defendants further stipulate and agree that the facts alleged in the Amended Complaint establish all elements necessary to sustain an action by Plaintiff pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523 (a)(2)(A), and that this Judgment shall have collateral estoppel effect for such purposes.

10. Entry of this Judgment is in the public interest.

11. No costs shall be taxed against Plaintiff pursuant to Tenn. Code Ann. § 47-18-116 and Defendants shall bear their own costs.

Definitions

For purposes of this Judgment, the following definitions shall apply:

1. **“Assets”** means any legal or equitable interest in, right to, or claim to, any real and personal property, including, but not limited to, chattel, goods, instruments, equipment, fixtures, general intangibles, effects, leaseholds, premises, contracts, mail or other deliveries, shares of stock, lists of consumer names, inventory, checks, notes, accounts, credits, receivables, funds, and all cash, wherever located.

2. **“Assisting other persons”** means providing any of the following services to any person: (a) administering a magazine service; (b) administering a benefits or discount program; (c) performing customer service functions, including receiving or responding to customer complaints; (d) formulating or providing, or arranging for the formulation or provision of, any sales script or any other marketing material; (e) providing marketing services of any kind, including but not limited to solicitation of sales for any person or entity; (f) providing credit card merchant processing accounts, or otherwise providing access to a billing and collection system, such as a credit card or debit card, or to an individual’s checking or savings account; (g) providing names of, or assisting in the generation of, potential customers; (h) performing or providing marketing or billing services of any kind; (i) performing fulfillment services; (j) purchasing sales orders; (k) acting as an officer or director of a business entity; or (l) providing telemarketing services.

3. **“Benefits or discount program”** includes any program, membership, card, product, or other good or service, that purports to offer discounts, savings, or benefits on goods or services, or access to such discounts, savings, or benefits.

4. **“Clearly and conspicuously”** means a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, physical or temporal location, or volume (if applicable), compared to other information with which it is presented, that it is readily apparent to the person to whom it is

disclosed. A statement may not contradict or be inconsistent with any other information with which it is presented. If a statement is necessary to prevent other information from being misleading, deceptive or unfair, then the statement must be presented in close proximity to the other information, in a manner that is readily noticeable, readable and understandable, and it must not be obscured in any manner. To be clear and conspicuous, warnings, disclosures, limitations or exceptions must be set out in close temporal or physical conjunction with the benefits or items described or referenced, or with appropriate captions, of such prominence that warnings, disclosures, limitations or exceptions are not minimized, rendered obscure, presented in an ambiguous fashion, or intermingled with the context of the statement so as to be confusing or misleading or contradictory. The statement shall be in understandable language and syntax. Nothing contrary to, inconsistent with, or in mitigation of the statement shall be used in any communication.

5. **“Corporate Defendants”** means Mountain Area Communications, LLC, and American Publisher’s Service, LLC.

6. **“Defendants”** means all of the Individual Defendants and the Corporate Defendants, individually, collectively, or in any combination.

7. **“Document”** is synonymous in meaning and equal in scope to the usage of the term in Fed. R. Civ. P. 34, and includes writings, drawings, graphs, charts, photographs, audio and video recordings, computer records, and other data compilations from which information can be obtained, extracted and translated, if necessary, through detection devices into reasonably usable form. A draft or non-identical copy is a separate document.

8. **“Individual Defendants”** means Shawna R. McDonald, Eric N. McDonald, and Zachary F. Haverland.

9. **“Magazine service”** shall mean a magazine subscription service or

subscription package (that combines two or more publications) for a term of more than one year for which payment is to be made in two or more installments (regardless of how the payments are spaced over the period of the subscription(s)) and where an entity other than the magazine publishers will bill and collect payment from the consumer.

10. **“Material fact”** means any fact that is likely to affect a person’s choice of, or conduct regarding, goods or services.

11. **“National Do Not Call Registry”** means the National Do Not Call Registry, which is the “do-not-call” registry maintained by the Federal Trade Commission pursuant to 16 C.F.R. § 310.4(b)(1)(iii)(B).

12. **“Negative option feature”** shall be defined as set forth in Section 310.2(t) of the Telemarketing Sales Rule, 16 C.F.R. Part 310.

13. **“Outbound telephone call”** means a telephone call initiated by a telemarketer to induce the purchase of goods or services or to solicit a charitable contribution.

14. **“Person”** means a natural person, organization, or other legal entity, including a corporation, partnership, proprietorship, association, cooperative, government or governmental subdivision or agency, or any other group or combination acting as an entity.

15. **“Receiver”** means Jeanne Barnes Bryant, Esquire, and/or Robert E. Moore, Esquire, the temporary receivers appointed in this action for the Receivership Defendants.

16. **“Receivership Defendants”** means Mountain Area Communications, LLC and American Publisher’s Service, LLC.

17. **“Representatives”** shall have the same scope as Fed. R. Civ. P. 65(d)(2), and means Defendants’ successors, assigns, officers, agents, servants, employees, or attorneys, and any Person or entity in active concert or participation with them who receives actual notice of this Judgment by personal service or otherwise.

18. “**Telemarketing**” means a plan, program, or campaign which is conducted to induce the purchase of goods or services or a charitable contribution, by use of one or more telephones and which involves more than one interstate telephone call, whether or not covered by the Telemarketing Sales Rule, 16 C.F.R. Part 310.

STIPULATED PERMANENT INJUNCTION

**I. PROHIBITIONS AGAINST DECEPTIVE AND ABUSIVE
BUSINESS AND TELEMARKETING PRACTICES**

IT IS THEREFORE ORDERED that Defendants and their Representatives, whether acting directly or through any other person, in connection with the advertising, marketing, promotion, offering for sale, or sale of any good or service, specifically including, but not limited to, any magazine service, benefits or discount program, are hereby permanently restrained and enjoined from engaging in or causing or assisting other persons to engage in or cause, violations of any provision of the TSR and TCPA, including, but not limited to, the following:

- A. Misrepresenting, directly or by implication, any material aspect of the performance, efficacy, nature, or central characteristics of the goods or services that are the subject of a sales offer;
- B. Misrepresenting, directly or by implication, any material restriction, limitation, or condition to purchase, receive, or use the good or service;
- C. Misrepresenting, directly or by implication, any material aspect of the nature or terms of any refund, cancellation, exchange, or repurchase policy, including but not limited to the likelihood of a consumer obtaining a full or partial refund, or the circumstances in which a full or partial refund will be granted to the consumer;
- D. Misrepresenting, directly or by implication, that any person or entity is affiliated

with, endorsed or approved by, or otherwise connected to any person;

- E. Misrepresenting, directly or by implication, any material fact, including but not limited to, the total costs to purchase, receive, or use, and the quantity of, the good or service;
- F. Misrepresenting, directly or by implication, any material term, condition, or limitation, of any offer with a negative option feature;
- G. Making a false, deceptive or misleading statement to induce any person to pay for goods or services or to induce a charitable contribution;
- H. Failing in any outbound telephone call to disclose truthfully, promptly, and in a clear and conspicuous manner (i) the identity of the seller; (ii) the nature of the goods or services; and (iii) that the purpose of the call is to sell goods and services;
- I. Initiating any outbound telemarketing call to a person's telephone number on the National Do Not Call Registry of persons who do not wish to receive outbound telephone calls to induce the purchase of goods or services, or to persons who previously advised Defendant they did not wish to receive calls unless:
 - (1) the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person; or
 - (2) the seller has an established business relationship with such person and that person has not previously stated that he or she does not wish to receive outbound telemarketing calls made by or on behalf of Defendant;

- J. Initiating any outbound call to a person at times other than between 8:00 a.m. and 9:00 p.m. local time at the called person's location;
- K. Causing billing information to be submitted for payment, directly or indirectly, without the express informed consent of the consumer;
- L. Presenting to or depositing into, or causing a merchant, or an employee, representative, or agent of the merchant to present to or deposit into, the credit card system for payment, a credit card or debit card sales draft generated by a telemarketing transaction that is not the result of a telemarketing credit card or debit card transaction between the cardholder and merchant;
- M. Obtaining access to a credit card system through the use of a business relationship or affiliation with a merchant, when such access is not authorized by the merchant agreement or the applicable credit card system;
- N. Providing substantial assistance and support to any person, while knowing, or consciously avoiding knowing, that such person is engaged in acts and practices that violate the TSR; and
- O. Failing to keep, for a period of twenty-four (24) months from the date the record is produced, all:
 - (1) substantially different advertising, brochures, telemarketing scripts, and promotional materials; and
 - (2) verifiable authorizations or records of express informed consent or express agreement required to be provided under the TSR.

II. PROHIBITION AGAINST RECEIVING COMPENSATION FROM DEFENDANTS' CUSTOMERS

IT IS FURTHER ORDERED that Defendants and their Representatives are

permanently restrained and enjoined from collecting, receiving, billing, or attempting to collect from, bill, or receive, any form of compensation from any person to whom Defendants or their Representatives sold any goods or services prior to the date of entry of this judgment.

III. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

- A. Judgment is entered in favor of Plaintiff and against Defendants Mountain Area Communications, LLC, Shawna R. McDonald, and Zachary F. Haverland, jointly and severally, in the amount of Thirteen Million Six Hundred Fifty-Five Thousand Two Hundred Thirty-Two Dollars (\$13,655,232.00), as equitable monetary relief for consumer injury caused by these Defendants' alleged unlawful practices under the Telemarketing Act and TCPA; *provided however*, that subject to the provisions of the Conditional Stay of Judgment Against Defendants below, this Monetary Judgment shall be suspended;
- B. Judgment is entered in favor of Plaintiff and against Defendants American Publisher's Service, LLC, and Eric N. McDonald, jointly and severally, in the amount of Six Million Seven Hundred Thirty-One Thousand Eight Hundred Thirty-Three Dollars (\$6,731,833.00), as equitable monetary relief for consumer injury caused by these Defendants' alleged unlawful practices under the Telemarketing Act and TCPA; *provided however*, that subject to the provisions of the Conditional Stay of Judgment Against Defendants below, this Monetary Judgment shall be suspended;
- C. The equitable monetary relief set forth in this Monetary Judgment constitutes a disgorgement of ill gotten gains realized by the Defendants since the inception

of Corporate Defendants;

- D. Any funds transferred or paid to Plaintiff pursuant to this Judgment shall be deposited into a fund administered by Plaintiff or its agent to be used for equitable relief, including, but not limited to, consumer redress and any attendant expenses for the administration of any redress fund at the sole discretion of the Tennessee Attorney General. Defendants shall have no right to challenge Plaintiff's choice of remedies under this Judgment;
- E. Within sixty (60) days from the date of the entry of this Judgment, the Receiver shall provide written notice of this Judgment to all consumers who are still making payments for magazine services or benefits or discount programs sold to them by any Defendant, and shall advise them that they are entitled to cancel their magazine services or benefits or discount programs and receive a refund, and that their magazine services or benefits or discount programs will terminate at the conclusion of the Receivership;
- F. Plaintiff shall use and distribute payments received under this Judgment for consumer redress as follows:
 - 1. If it is economically efficient, as determined at the sole discretion of the Director of the Tennessee Division of Consumer Affairs ("Director"), in consultation with the Tennessee Attorney General, consumer redress shall be paid to those consumers who:
 - (a) Purchased any goods or services from Defendants at any time, and at the time of such purchase were residents of the State of Tennessee;

- (b) Prior to the date of entry of this Judgment, and up to ninety (90) days thereafter, file a complaint with any government or private complaint agency including, but not limited to, the Tennessee Division of Consumer Affairs, the Better Business Bureau, the Federal Trade Commission, any state attorney general office, or any government consumer protection agency;
- (c) Prior to the date of entry of this Judgment, made a complaint to any Defendant; or
- (d) As of the time of entry of this Judgment, and up to one hundred twenty (120) days thereafter, notify Plaintiff or the Receiver that they wish to receive a refund.

- 2. If funds are not available to pay the consumer redress as set forth herein, but distribution is economically efficient as determined at the sole discretion of the Director, in consultation with the Tennessee Attorney General, the amount shall be distributed on a *pro rata* basis to all eligible consumers. Further, if the number of consumers who are eligible under the criteria set forth above would make a distribution economically inefficient (*i.e.*, high administrative costs resulting in a nominal consumer restitution amount), as determined at the sole discretion of the Director, in consultation with the Tennessee Attorney General, then Plaintiff may apply any remaining funds to other equitable relief, including consumer education remedies.

G. In the event that it is necessary for Defendants to execute additional documents

to surrender any assets under this Judgment or any other orders in this action, or dissolve and wind down the Receivership Defendants, Individual Defendants shall execute such documents within three business days of a request from the Receiver or Plaintiff; and

- H. Any payments made to Plaintiff under this Judgment shall be made by certified or cashier's check made payable to the "Treasurer, State of Tennessee - Attorney General" and deliver to Plaintiff as set forth in Section XII(D) (Compliance Reporting) of this Judgment.

IV. CONDITIONAL STAY OF JUDGMENT AGAINST DEFENDANTS

IT IS FURTHER ORDERED that:

- A. Plaintiff's agreement to and the Court's approval of this Judgment are expressly premised upon the truthfulness, accuracy, and completeness of Defendants' most recent Financial Statements submitted to Plaintiff ("Financial Statements"), Individual Defendants' depositions, and Corporate Defendants' Fed. R. Civ. P. 30(b)(6) depositions ("Depositions"), all of which Defendants assert are truthful, accurate, and complete. Defendants and Plaintiff stipulate that Defendants' Financial Statements and Depositions in this case provide the basis for the Monetary Judgment set forth herein and that Plaintiff has relied on the truthfulness, accuracy, and completeness of Defendants' Financial Statements and Depositions in agreeing to this Conditional Stay of Judgment Against Defendants.
- B. If, upon motion by Plaintiff, this Court finds that any Defendant has (1) materially misstated in such Defendant's Financial Statement or Deposition, any fact relating to the value of any asset, (2) made any material misrepresentation

or omitted material information concerning his or her financial condition by failing to disclose any asset that should have been disclosed in Defendants' Financial Statement or Depositions, (3) made any other material misstatement or omission in Defendants' Financial Statement or Depositions, (4) made any other material misstatement or omission in Individual Defendants' Affidavit Attesting to the Truthfulness of Financial Statements, or (5) failed to fulfill any obligation in the surrendering of assets under this Judgment, the Court shall terminate this Section of the Judgment (Conditional Stay of Judgment), and, without further adjudication, shall enter a modified judgment holding such Defendant liable to Plaintiff in the total amount of the Monetary Judgment, less any amounts previously turned over to Plaintiff under this Judgment. Upon reinstatement of the Monetary Judgment, the Court shall make an express determination that the Monetary Judgment shall become immediately due and payable by such Defendant, and Plaintiff shall be entitled to interest computed from the day of entry of this Judgment at the rate prescribed under 28 U.S.C. § 1961, as amended, on the unpaid balance. Plaintiff shall be permitted to execute on the Judgment immediately after the suspension is lifted and engage in discovery in aid of execution.

- C. Defendants acknowledge and agree that (1) this Monetary Judgment is equitable monetary relief, solely remedial in nature, and is not a fine, punitive penalty, punitive assessment, or forfeiture; (2) any proceedings instituted under this Section (Conditional Stay of Judgment) would be in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any other proceedings that Plaintiff may initiate to enforce this Judgment; and

(3) for purposes of any action brought pursuant to this Section (Conditional Stay of Judgment), Defendants waive the right to contest any of the allegations in the Amended Complaint, and any restitution plan or selection of remedies by Plaintiff under this Judgment.

V. LIFTING OF ASSET FREEZE

IT IS FURTHER ORDERED that the freeze of assets of Defendants pursuant to the Temporary Restraining Order entered by this Court on February 16, 2012, [Doc. 11], as modified February 28, 2012, [Doc. 37], shall be lifted solely for the purpose of transferring assets as required by this Judgment, and shall be dissolved as to the Individual Defendants upon transfer of all such assets. A financial institution shall be entitled to rely upon a letter from Plaintiff stating that the freeze of assets of any Defendant has been lifted or that funds in a previously frozen account should be transferred to the Receiver, and Plaintiff shall provide such a letter upon request by a financial institution or the Receiver.

VI. APPOINTMENT OF RECEIVER TO WIND DOWN RECEIVERSHIP DEFENDANTS AND LIQUIDATE ASSETS

IT IS FURTHER ORDERED that temporary receivers Jeanne Barnes Bryant, Esquire, and Robert E. Moore, Esquire, are hereby appointed as the Receiver for the Receivership Defendants, for the purpose of taking necessary steps to liquidate the assets of Receivership Defendants, liquidate any other assets transferred to the Receiver, wind down the business of Corporate Defendants, and pay any net proceeds to Plaintiff to satisfy the Monetary Judgment in this Judgment. The Receiver shall be the agent of this Court, and solely the agent of this Court, in acting as Receiver under this Judgment. The Receiver shall be accountable directly to this Court, and is authorized to:

- A. Take possession, custody, and control of all assets Defendants are required to

surrender under the terms of this Judgment and liquidate them;

B. Pay only those secured debts that the Receiver deems necessary to preserve assets to be liquidated under the terms of this Judgment. The Receiver shall not make any payments to a creditor if the creditor's security interest is the same or exceeds the value of the assets;

C. Take possession, custody, and control of the following assets of Defendants and liquidate them:

1. 3773 E. Andrew Johnson Highway, Morristown, Tennessee, titled to Shawna R. McDonald and Zachary F. Haverland;
2. 150 Lake Access Road, Mooresburg, Tennessee, titled to Zachary F. Haverland;
3. 3011 Waters Edge Drive, Morristown, Tennessee, titled to Shawna R. McDonald and Eric N. McDonald;
4. 2006 Nissan Truck, titled to Zachary F. Haverland;
5. 186 Campbell Drive, Sneedville, Tennessee, titled to Shawna R. McDonald and Eric N. McDonald;
6. 2005 Infiniti FX35 SUV, titled to Eric N. McDonald and Shawna R. McDonald;
7. 831 Kandena Drive, Morristown, Tennessee, titled to Eric N. McDonald;
8. 5703 Christina Lane, Morristown, Tennessee, titled to Eric N. McDonald;
9. Lot, Reeds Chapel Road, titled to Shawna R. McDonald and Eric N. McDonald;
10. Dodge Pick Up Truck titled to Shawna R. McDonald and Eric N. McDonald;
11. 1973 Volkswagen Thing, titled to Zachary F. Haverland;
12. Infiniti QX56 SUV titled to Zachary F. Haverland;
13. \$12,000 Wal-Mart Gift Cards belonging to American Publisher's Service, LLC;
14. \$10,000 in a First Tennessee safety deposit box belonging to Eric McDonald;

15. All bank accounts of all Defendants;
16. \$91,774.85 from defense counsel Helen MacMurray, Esquire's trust account; and
17. \$49,276.09 from defense counsel Jerry Laughlin, Esquire's trust account.

Provided however, that any asset which is encumbered shall be surrendered to the lender, and the Receiver is not required to liquidate any asset that the Receiver determines, in the Receiver's discretion, could not be sold for value. The Receiver shall promptly notify Plaintiff of any such determination. Plaintiff must file any objection to the Receiver's determination within 30 days after receiving notice. If no objection is filed within that time, the Receiver may, in the Receiver's discretion, abandon the asset;

- D. Give notice of the method of sale of these assets by filing a notice of each sale with the Court, and serving counsel for the Plaintiff and Defendants. Other than notice given to parties through the Court's CMIECF system, the Receiver shall not be required to serve any other party with notice of each sale. The Receiver may pay (without further authorization) fees incurred by agents, auctioneers, realtors, closing agents, etc., at rates which are consistent with rates for liquidation of bankruptcy estates in the Eastern District of Tennessee, pursuant to local rules of that court;
- E. Transfer the title of the Ford F150 Pick Up Truck to Defendants Eric N. McDonald and Shawna R. McDonald;
- F. Distribute the sum of \$75,000 by paying the same to defense counsel D. Scott Hurley, Esquire;

- G. Distribute the sum of \$158,000 by paying the same to defense counsel Helen MacMurray Esquire;
- H. Take any and all steps that the Receiver concludes are appropriate to wind down the Receivership as to Receivership Defendants;
- I. Continue to exercise full control over the Receivership Defendants and continue to collect, marshal, and take custody, control, and possession of all the funds, property, premises, accounts, documents, mail, and other assets of, or in the possession or under the control of, the Receivership Defendants, wherever situated, the income and profits therefrom, and all sums of money now or hereafter due or owing to the Receivership Defendants on account of their activities prior to the date of the entry of this Judgment, with full power to collect, receive, and take possession of all goods, chattels, rights, credits, monies, effects, lands, leases, books and records, limited partnership records, work papers, and records of accounts, including computer-maintained information, contracts, financial records, monies on hand in banks and other financial institutions, and other papers and documents of other individuals, partnerships, or corporations whose interests are now held by or under the direction, possession, custody, or control of the Receivership Defendants (“Receivership Estate”). The Receiver shall promptly initiate and prosecute all legal proceedings to fulfill the obligations set forth in this subparagraph of the Order, and provide monthly updates to the Court and Plaintiffs on the status of any such proceedings;
- J. Continue to have full control over the management and personnel of the Receivership Defendants, including the authority to remove, as the Receiver

deems necessary or advisable, any director, officer, independent contractor, employee, or agent of these Defendants from control of, management of, or participation in, the affairs of these Defendants;

- K. Take all steps necessary or advisable, including issuing subpoenas, to locate and liquidate all other assets of the Receivership Defendants, cancel the Receivership Defendants' contracts, collect on amounts owed to the Receivership Defendants, and take such other steps as may be necessary to wind-down, terminate and dissolve the Receivership Defendants efficiently;
- L. Make payments and disbursements from the Receivership Estate that are necessary or advisable for carrying out the directions of, or exercising the authority granted by, this Judgment. The Receiver shall apply to the Court for prior approval of any payment of any debt or obligation incurred by the Receivership Defendants prior to the date of entry of the temporary restraining order in this action, except payments that the Receiver deems necessary or advisable to secure and liquidate assets of the Receivership Defendants, such as rental payments or payment of liens;
- M. Continue to perform all acts necessary or advisable to complete an accounting of the Receivership assets, and prevent unauthorized transfer, withdrawal, or misapplication of assets;
- N. Continue to maintain accurate records of all receipts and expenditures that the Receiver makes;
- O. Continue to enter into contracts and purchase insurance as advisable or necessary;

- P. Continue to defend, compromise, adjust, or otherwise dispose of any or all actions or proceedings instituted in the past or in the future against the Receiver in his role as Receiver, or against the Receivership Defendants, as the Receiver deems necessary and advisable to carry out the Receiver's mandate under this Order;
- Q. Continue to maintain bank accounts created as designated depositories for funds of the Receivership Defendants, and make all payments and disbursements from the Receivership Estate from such an account;
- R. Continue to perform all incidental acts that the Receiver deems to be advisable or necessary, which includes retaining, hiring, or dismissing any employees, independent contractors, or agents;
- S. Continue to cooperate with reasonable requests for information or assistance from any state or federal law enforcement agency;
- T. Dispose of or arrange for the disposal of, the records of the Receivership Defendants no later than two (2) years after the Court's approval of the Receiver's final report. Prior to disposing of the records, the Receiver shall notify Plaintiff and the Individual Defendants and Plaintiff may elect to take possession of some or all of the records of Receivership Defendants at this time. The Receiver shall provide reasonable access to the records to the Individual Defendants, at their expense. So that the privacy of consumers is safeguarded, records containing personal financial information shall be shredded, incinerated, or otherwise disposed of in a secure manner. For records that must be retained, the Receiver may elect to retain records in their

original form or to retain photographic or electronic copies so long as said records are: (1) kept in a secure, locked area; (2) stored electronically on a computer network or drive with restricted access or an encrypted electronic storage device; or (3) redacted of all personally identifiable information including dates of birth, Social Security numbers, driver's license numbers or other state identification numbers, passport numbers, financial account numbers, or credit or debit card numbers. Provided, however, that the Receiver may not sell, rent, lease, transfer, disclose, use, or otherwise benefit from the name, address, telephone number, credit card number, bank account number, e-mail address, or other identifying information of any person who paid any money to Defendants in connection with the advertising, promotion, marketing, offering for sale, or sale of any product or service, except that the Receiver may disclose such identifying information and any records to a law enforcement agency, or as required by any law, regulation, or court order;

- U. Notify all consumers who are continuing to make payments for magazine services, benefits or discount programs, or any other goods or services marketed or sold by Defendants, of this Judgment and that each such account will be cancelled within a period of time to be determined by the Receiver. Any consumer so notified who requests a refund shall be entitled to receive restitution as set forth in this Judgment. The form of notice shall be approved by the Tennessee Attorney General.
- V. The Receiver shall not be required to file tax returns for any of the Defendants in this proceeding, but shall provide reasonable cooperation with any

accountant or professional who needs access to records to prepare said returns.

VII. COMPENSATION OF RECEIVER

IT IS FURTHER ORDERED that the Receiver and all personnel hired by the Receiver, including counsel to the Receiver and accountants, are entitled to reasonable compensation for the performance of duties pursuant to this Judgment and for the cost of actual out-of-pocket expenses incurred by them, from the assets now held by, in the possession or control of, or which may be received by, the Receiver. The Receiver shall apply to the Court for approval of specific amounts of compensation and expenses and must not increase the hourly rates used as the bases for such fee applications without prior approval of the Court.

VIII. RECEIVER'S DISSOLUTION AND DISBURSEMENT REPORT

IT IS FURTHER ORDERED that:

- A. No later than ninety (90) days from the time the Receiver has sent notice to all consumers who are still making payments for magazine services, benefits or discount programs, or any other goods or services sold or marketed to them by Defendants, the Receiver shall file with the Court and serve on the parties a report that details the steps taken to dissolve the Receivership Estate ("Receiver's Dissolution and Disbursement Report"). The Receiver's Dissolution and Disbursement Report must include an accounting of the Receivership Estate's finances and total assets and a description of what other actions, if any, must be taken to wind down the Receivership;
- B. The Receiver shall mail copies of the Receiver's Dissolution and Disbursement Report to the creditors listed in the Receiver's monthly reports, along with a notice stating that any objections to paying any assets of the

Receivership Defendants to satisfy the Receiver's costs and expenses and the Monetary Judgment set forth in this Judgment must be submitted to the Court and served by mail upon the Receiver and the parties within thirty (30) days of the mailing of the Receiver's Dissolution and Disbursement Report. The Receiver is not required to mail copies of the Receiver's Dissolution and Disbursement Report to any holders of consumer claims;

- C. No later than fifteen (15) days after submission of the Receiver's Dissolution and Disbursement Report, the Receiver shall file an application for payment of compensation and expenses associated with performance of duties as Receiver.
- D. The Court will review the Receiver's Dissolution and Disbursement Report and any objections to the Report and, absent a valid objection, will issue an order directing that the Receiver:
 - (1) Pay the reasonable costs and expenses of administering the receivership, including compensation of the Receiver and the Receiver's personnel as authorized by this Judgment or other orders of this Court and the actual out-of-pocket costs incurred by the Receiver in carrying out the Receiver's duties;
 - (2) With Court approval, the Receiver may hold back funds for a specified period as a reserve to cover additional fees and costs related to actions to be addressed in a Supplemental Report. The Receiver shall notify Plaintiff of any such decision to withhold funds. Plaintiff must file any objection to any such decision by the Receiver within 30 days after receiving notice. If the Receiver does not make a supplemental

application for fees and expenses within the specified period, or if funds remain in the reserve fund after the payment of fees and expenses approved by the Court in response to such a supplemental application, all funds in the reserve funds shall be immediately paid to Plaintiff or its designated agent;

- (3) Pay all remaining funds to Plaintiff or its designated agent to reduce the Monetary Judgment; and
- (4) Any party asserting a claim against the Receivership Estate who asserts that the claim should be paid before the consumer redress ordered in this Judgment, shall file a motion with the Court to establish the claim's priority, along with any objections to the Receiver's Dissolution Report and Disbursement, within 30 days after submission of the Report to the Court. Such party shall serve copies of any motions and objections on the Receiver and Plaintiff. Plaintiff and the Receiver must file any response to the motions and objections within 30 days after receiving them;

E. If subsequent actions (such as further actions to recover funds for the Receivership Estate) are appropriate, the Receiver shall file an additional report or reports ("Supplemental Reports") describing the subsequent actions and a subsequent application for the payment of fees and expenses related to the subsequent acts; and

F. Upon the completion of the disposition of all assets and money, and after all records have been destroyed, or turned over to other governmental authorities

in accordance with this Judgment, the Receiver shall file with the Court a Final Report, stating that the administration of the Receivership Estate is completed. The Receiver shall serve the Final Report on all the parties to this action. Any objection to the Final Report by the parties must be filed within fifteen (15) days after the Receiver filed the Report with the Court. If no objections are filed within that time, the Receiver shall submit a proposed order to the Court which discharges the Receiver from his obligations in this matter.

IX. COOPERATION WITH RECEIVER

IT IS FURTHER ORDERED that Defendants, their Representatives, and all other persons or entities served with a copy of this Judgment shall fully cooperate with and assist the Receiver in taking and maintaining possession, custody, or control of the assets of the Defendants. This cooperation and assistance shall include, but not be limited to: providing information to the Receiver that the Receiver deems necessary in order to exercise the authority and discharge the responsibilities of the Receiver under this Judgment; providing any password required to access any computer, electronic file, or telephonic data in any medium; advising all persons who owe money to the Receivership Defendants that all debts should be paid directly to the Receiver; and transferring funds at the Receiver's direction and producing records related to the sales and assets of the Receivership Defendants. The Receiver shall provide reasonable notice, in advance and in writing to any Defendant and his or her legal counsel, of any need for cooperation or assistance.

X. COOPERATION WITH PLAINTIFF

IT IS FURTHER ORDERED that Defendants shall, in connection with this action or any subsequent investigations related to or associated with the transactions or the

occurrences that are the subject of the Amended Complaint or location of assets, cooperate in good faith with Plaintiff, and use their best efforts to ensure that their officers, directors, employees, former employees, advisors and other persons in this matter cooperate with Plaintiff, and appear at such places and times as Plaintiff shall reasonably request, after written notice, for interviews, conferences, pretrial discovery, review of documents, and for such other matters as may be reasonably requested by Plaintiff. If requested in writing by Plaintiff, Defendants shall appear and provide truthful testimony in any trial, deposition, or other proceeding related to or associated with the transactions or the occurrences that are the subject of the Amended Complaint, without the service of a subpoena. Defendants shall also cooperate and fully assist Plaintiff in identifying the name, address, telephone number, date of purchase, program or product purchased, total amount paid, amount of any full or partial refund or chargeback, and payment information for consumers who were charged by Defendants or their Representatives, and any further information Plaintiff deems necessary to effectuate any redress program for consumers.

XI. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of (a) monitoring and investigating the compliance of any Defendant with any provision of this Judgment, and (b) investigating the accuracy of Defendants' Financial Statement and Depositions upon which Plaintiff's agreement to this Judgment is expressly premised:

- A. Within twenty (20) business days of receipt of written notice from a representative of Plaintiff, Defendants shall submit additional written reports, which are true and accurate and sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and provide entry during normal business hours to any business location in their possession

or direct or indirect control to inspect the business operation;

B. In addition, Plaintiff is authorized to use all other lawful means, including but not limited to:

1. obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, 45 and 69; and
2. having its representatives pose as consumers, employees, or suppliers to Defendants, their employees, or any other entity managed or controlled in whole or in part by any Defendant, without the necessity of identification or prior notice; and

C. Defendants shall not interfere with or obstruct efforts by representatives of Plaintiff to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Judgment. The person interviewed may have counsel present; provided however, that nothing in this Judgment shall limit Plaintiff's lawful use of compulsory process, pursuant to Tenn. Code Ann. § 47-18-106 of the TCPA, to obtain any documentary material, tangible things, testimony, or information relevant to unfair, deceptive, misleading or abusive acts or practices in or affecting trade or commerce.

XII. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Judgment may be monitored:

- A. For a period of two (2) years from the date of entry of this Judgment,
1. Defendants shall notify Plaintiff of the following:

- (a) Any changes in a Defendant's residence, mailing address, and telephone numbers, within ten (10) business days of the date of such change;
 - (b) Any changes in a Defendant's employment status (including self-employment), and any changes in ownership in any business entity, within ten (10) business days of the date of such change. Such notice shall include the name and address of each business that the Defendant is affiliated with, employed by, creates or forms, or performs services for; a detailed description of the nature of the business; and a detailed description of his or her duties and responsibilities in connection with the business or employment; and
 - (c) Any changes in a Defendant's name or use of any aliases or fictitious names within ten (10) business days of the date of such change;
2. Defendants shall notify Plaintiff of any changes in the structure of any business entity that any Defendant directly or indirectly controls, or has an ownership interest in, that may affect compliance obligations arising under this Judgment, including but not limited to: incorporation or other organization; a dissolution, assignment, sale, merger, or other action; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Judgment; or a change in the business name or address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the

business entity about which a Defendant learns less than thirty (30) days prior to the date such action is to take place, the Defendant shall notify Plaintiff as soon as is practicable after obtaining such knowledge;

B. One hundred eighty (180) days after the date of entry of this Judgment and annually thereafter for a period of two (2) years, each Defendant shall provide a written report to Plaintiff, which is true and accurate and sworn to under penalty of perjury, setting forth in detail the manner and form in which he or she has complied and is complying with this Judgment. This report shall include, but not be limited to:

1. Defendants' then-current residence address, mailing addresses, and telephone numbers;
2. Defendants' then-current employment status (including self-employment), including the name, addresses, and telephone numbers of each business that he or she is affiliated with, employed by, or performs services for; a detailed description of the nature of the business; and a detailed description of his or her duties and responsibilities in connection with the business or employment;
3. A copy of each acknowledgment of receipt of this Judgment, obtained pursuant to Section XIV (Distribution of Judgment) of this Judgment; and
4. Any other changes required to be reported under this Section (Compliance Reporting) of the Judgment;

C. Defendants shall notify the Plaintiff of the filing of a bankruptcy petition by any Defendant within fifteen (15) days of filing;

- D. For the purposes of this Judgment, Defendants shall, unless otherwise directed by Plaintiff's authorized representatives, send by overnight courier (not the U.S. Postal Service) all reports and notifications required by this Order to:

Deputy Attorney General
Office of the Attorney General
Consumer Advocate and Protection Division
Post Office Box 20207
Nashville, Tennessee 37202

*Re: State of Tennessee v. Mountain Area Communications, LLC, et al.,
Case No. 2:12-cv-00053.*

Provided that, in lieu of overnight courier, Defendants may send such reports or notifications by first-class mail, but only if Defendants contemporaneously sends a facsimile version of such report or notification to Plaintiff at (615) 532-2910; and

- E. For purposes of the compliance reporting and monitoring required by this Judgment, Plaintiff is authorized to communicate directly with Defendants, but shall notify Defendants' attorney in writing of any such communication.

XIII. RECORDKEEPING

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Judgment, any Defendant, for any business for which he, individually or in concert with others, is the majority owner or directly or indirectly controls, is hereby restrained and enjoined from failing to create and retain the following records:

- A. Accounting records that reflect the cost of goods or services sold, revenues generated, and the disbursement of such revenues;
- B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed in any capacity by such business, including

as an independent contractor; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable;

- C. Customer files containing the names, addresses, phone numbers, dollar amounts paid, quantity of items or services purchased, and description of items or services purchased, to the extent such information is obtained in the ordinary course of business;
- D. Complaints and refund requests (whether received directly or indirectly, such as through a third party) and any responses to those complaints or requests;
- E. Copies of all sales scripts, training materials, advertisements, or other marketing materials; and
- F. All records and documents necessary to demonstrate full compliance with each provision of this Judgment, including but not limited to, copies of acknowledgments of receipt of this Judgment required by Sections XIV (Distribution of Judgment) and XV (Acknowledgment of Receipt of Judgment), and all reports submitted to Plaintiff pursuant to Section XII (Compliance Reporting) of this Judgment.

XIV. DISTRIBUTION OF JUDGMENT

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Judgment, Defendants shall deliver copies of this Judgment as directed below:

- A. Defendant as control person: For any business that any Defendant controls, directly or indirectly, or in which he or she has a majority ownership interest, such Defendant must deliver a copy of this Judgment to (1) all principals, officers, directors, and managers of that business; (2) all employees, agents,

and representatives of that business who engage in telemarketing; and (3) any business entity resulting from any change in structure set forth Section XII (Compliance Reporting). For current personnel, delivery shall be within five (5) business days of service of this Judgment upon such Defendant. For new personnel, delivery shall occur prior to them assuming their responsibilities. For any business entity resulting from any change in structure set forth in Section XII (Compliance Reporting) of this Judgment, delivery shall be at least ten (10) business days prior to the change in structure.

- B. Defendant as employee or non-control person: For any business where any Defendant is not a controlling person of a business but otherwise engages in telemarketing, such Defendant must deliver a copy of this Judgment to all principals and managers of such business before engaging in such conduct.
- C. Defendant must secure a signed and dated statement acknowledging receipt of the Judgment, within thirty (30) days of delivery, from all persons receiving a copy of the Judgment pursuant to this Section (Distribution of Judgment).

XV. ACKNOWLEDGMENT OF RECEIPT OF JUDGMENT

IT IS FURTHER ORDERED that Defendants, within five (5) business days of receipt of this Judgment as entered by the Court, must submit to the Plaintiff a truthful sworn statement acknowledging receipt of this Judgment.

XVI. PROTECTING CONSUMER PRIVACY

A. Defendants agree that the consumer names, addresses, telephone numbers and other personally identifiable information gathered or otherwise obtained during any period when any Defendant conducted businesses, and during the implementation of this Judgment and the settlement discussions leading up to this Judgment, shall not be used for any marketing purposes

or provided to any person other than law enforcement for any reason, including but not limited to for the purposes of marketing to these consumers now or in the future.

B. Any lists and reports provided to Plaintiff by the Receiver, counsel for any of the Defendants or any Defendant and in the possession or control of any Defendant shall not be released to any person to protect the interest of consumer privacy, to prevent further marketing to these consumers and possible identity theft, other than law enforcement authorities or pursuant to state or federal law.

**XVII. PENALTIES FOR FAILURE TO COMPLY
WITH TENNESSEE CONSUMER PROTECTION ACT**

Pursuant to the provisions of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-108(c), any knowing violation of the terms of this Judgment shall be punishable by civil penalties of not more than Two Thousand Dollars (\$2,000.00) for each violation, in addition to any other appropriate sanctions including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties. Upon execution and filing of this Judgment, any subsequent failure to comply with the terms hereof is a prima facie evidence of a violation of the TCPA.

XVIII. THIRD PARTY RIGHT OF ACTION

Aside from a set-off as to actual monies received, nothing in this Judgment shall be construed to affect any private or public right of action that a consumer, person, entity, or any local state or federal or other government entity, may hold against any Defendant.

XIX. SEVERABILITY

If any clause, provision or section of this Judgment shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Judgment and this Judgment shall be construed

and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.

XX. SOVEREIGN IMMUNITY

Nothing in this Judgment shall be construed to waive any claim of Sovereign Immunity the State may have in any action or proceeding.

XXI. RELEASE

As to the civil causes of action asserted by the Tennessee Attorney General, this Judgment only resolves the Telemarketing Act and TCPA causes of action raised in the Amended Complaint by the Tennessee Attorney General based on the factual allegations contained in the Amended Complaint, and any contempt allegations raised by Plaintiff prior to the date of entry of this Judgment. This Release does not release in any way:

- A. any private right of action;
- B. any tax liability of any Defendant;
- C. any Non-Settling Defendant's liability;
- D. any liability to American Express;
- E. any criminal liability; and
- F. any subsequent enforcement action against any Defendant for conduct occurring after the time of the filing of the instant enforcement action.

XXII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Judgment.

XXIII. VACATING TEMPORARY RESTRAINING ORDER

Effective upon entry of this Judgment, the Temporary Restraining Order in this case is vacated.

XXIV. ENTRY OF ORDER

IT IS FURTHER ORDERED that there is no just reason for delay, and the Clerk of Court is hereby directed to enter this Judgment immediately.

IT IS SO ORDERED.



United States District Judge

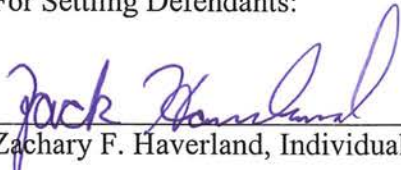
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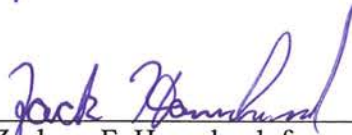
For Plaintiff:

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Attorney General and Reporter

/s/ Olha N.M. Rybakoff
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Attorney General and Reporter

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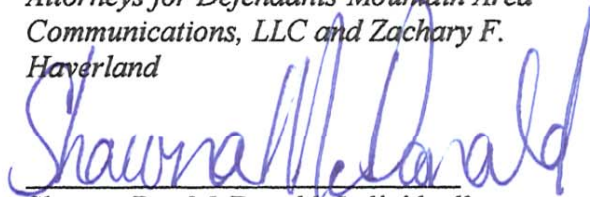
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